

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	)	
	)	
	)	ICC Docket No. 16-0453
Petition for Approval of the 2017	)	
Illinois Power Agency Procurement Plan	)	
Pursuant to Section 16-111.5(d)(4) of the	)	
Public Utilities Act	)	

**VERIFIED RESPONSE OF PEOPLE OF THE STATE OF ILLINOIS TO  
OBJECTIONS/COMMENTS ON THE  
2017 ILLINOIS POWER AGENCY PROCUREMENT PLAN**

The People of the State of Illinois, through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “the OAG”), hereby file their Verified Response to the Objections/Comments to the Illinois Power Agency’s (“IPA”) 2017 Procurement Plan filed on October 3, 2016, in accordance with the filing requirements of Section 16-111.5(d)(3) of the Public Utilities Act (“the Act”). 220 ILCS 5/16-111.5(d)(3). In particular, the People’s Response addresses issues Section 9 of the IPA’s Plan related to the procurement of energy efficiency, as discussed in Objections/Comments filed by Ameren Illinois Company (“Ameren” or “AIC”), Commonwealth Edison Company (“ComEd”) and the Commission Staff (“Staff”).

**I. RESPONSE TO OBJECTONS/COMMENTS**

**A. Section 9.2 -- 2016 Section 16-111.5B SAG Workshop Subcommittee – Reporting Costs**

In its Objections/Comments, Staff raises an issue that was listed as a non-consensus issue in the SAG 2016 Section 16-111.5B Workshop Report (“SAG IPA Report”) – the reporting of energy efficiency cost information. Staff asks for a Commission’s directive to require the utilities to report expected energy efficiency program costs in their IPA RFP submittals and, similarly, for the IPA to report these total costs in its Plan. The OAG supports that request. Staff

Objections at 7-8. Such a directive would improve the clarity and transparency in tracking and reporting energy efficiency costs, and should be adopted by the Commission.

**B. Section 9.4.1 – Scale of Section 16-111.5B Programs**

In the OAG’s Objections/Comments, the People asked the Commission to examine an issue raised in the IPA’s Plan – whether further investigation is needed through workshops regarding the most appropriate way to market utility RFPs to ensure that all cost-effective energy efficiency was being realized. As the OAG Objections/Comments noted, the IPA specifically highlighted this issue in light of the noted decrease in the number of bids from the prior year:

As discussed below in the review of the bids received for each utility, outreach has been fairly limited. It appears that existing outreach efforts are effective in reaching established energy efficiency industry firms, but it is less clear how well it has reached new firms with the potential to offer new and innovative approaches.

IPA Plan at 111. The IPA urged the Commission to direct the IPA, utilities and Stakeholders to engage in workshops after the close of the docket to discuss (1) more effective strategies for marketing Section 16-111.5B RFPs and 2) to require that the utilities’ potential studies and stakeholder feedback be utilized in ensuring that the RFPs, while remaining open-ended, specifically identify any program areas for which bids should be actively sought. *Id.* The OAG supported this directive.

At page 7 of its Objections/Comments, Ameren also noted the IPA’s statement on this point, and states that it does not object to this workshop plan. The OAG appreciates that spirit of cooperation and urges the Commission to implement that particular finding in its Final Order in this case.

**C. Section 9.4.2 – Improving/Refining Bids**

As noted at pages 3-7 of the OAG Objections/Comments, the issue has arisen, similarly highlighted at page 112 of the IPA Plan, as to whether the utilities are actively ensuring that the least cost contract terms and maximum savings goals are achieved from IPA bidders, both when a bid is received and after a program is approved. Indeed, the Commission specifically required the Utilities in their last Procurement Order in Docket No. 15-0541 to develop a plan to ensure that Section 16-111.5B contracts receive the same level of scrutiny as Section 8-103 contracts in terms of minimizing cost to the ratepayer and maximizing energy savings achieved.<sup>1</sup>

The fact is neither utility developed the plan requested by the Commission to ensure equivalent contract scrutiny. *See* OAG Objections/Comments at 3-7. The IPA's Plan indeed recognizes the potential impact on ratepayer costs and savings achieved in acknowledging the gray area that exists in IPA energy efficiency bids between a bid that passes the cost-effectiveness test of Section 16-111.5B but likewise allows for "bidders to propose programs with excessive administration costs by finding headroom in the TRC analysis." IPA Plan at 111.

This section of the IPA Plan raises two issues in need of specific Commission direction: (1) what constitutes reasonable contract terms that strike the appropriate balance of attracting bidders of all sizes, both local and national, and ensuring that ratepayers or utility shareholders are not left holding the bag for poorly implemented programs; and (2) how to ensure that the utilities negotiate IPA program contracts with the same level of vigor and interest as their Section 8-103 program contracts to ensure the maximum amount of forecasted savings at the least cost. These points are discussed below.

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<sup>1</sup> The Commission's Final Order in ICC Docket No. 15-0541 Final Order stated:

"It seems to be a simple matter to require the same level of scrutiny for Section 16-111.5B contracts as that which is imposed for Section 8-103 contracts. The utilities are directed to develop a plan to implement use of the same scrutiny for Section 16-111.5B contracts as that for Section 8-103 contracts through workshops conducted by the SAG." ICC Docket No. 15-0541, Order of December 16, 2015 at 110.

**1. What Constitutes Reasonable Bidding/Contract Requirements**

In its Objections, ComEd urges the Commission to provide its imprimatur on the actual contracting approaches and provisions used by ComEd this year for both third party bidders and its own implementers, provisions which the Company admits were revised and made more stringent this year following the Commission's disallowance in a ComEd energy efficiency rider reconciliation docket, ICC Docket No. 14-0567, of certain start-up costs paid to a third-party IPA vendor that eventually declared bankruptcy. ComEd Objection at 2-5.

It must be made clear, however, that the Commission never provided *specific* direction in its Docket No. 14-0567 Order as to what ideal contract terms look like. Indeed, the SAG IPA Report documents the fact that Ameren and ComEd employ different contracting terms with IPA vendors. Ameren, for example, employs a holdback of five percent (5%), subject to final evaluation results; and 3) requires vendors to obtain a surety bond for twenty-five percent (25%) of the annual contract cost. SAG IPA Report at 16. ComEd, on the other hand requires no surety bond for its third-party contractors, but does require a \$10 million cyber-security insurance coverage from bidders, and incorporates a 10% holdback pay-for-performance provision for vendor-proposed measures that have been evaluated and "deemed" in the Illinois Technical Reference Manual ("TRM"). *Id.*; ComEd Objections/Comments at 6; ComEd Appendix B. For those measures where savings have not been evaluated and deemed in the TRM, a 25% holdback provision is included. *Id.*

While the People appreciate ComEd's desire to gain certainty on contract terms the Commission views will both protect ratepayers and ComEd shareholders, this is not the docket to accomplish that if specific evidence and hearings are not conducted. ComEd's discussion of its contract terms, while informative, does not provide the Commission with evidence as to why

these particular terms achieve the appropriate balance of (1) protecting ratepayers from paying for programs from ineffective vendors, (2) ensuring bidders are not dissuaded from participating in the IPA bidding process because the terms are too draconian (particularly for smaller, local bidders); and (3) avoiding unnecessarily higher-priced bids from bidders who are able to meet ComEd's/Ameren's contract terms, but are forced to recoup the costs of meeting these terms in the bid prices. The bottom line is that this record lacks specific evidence on what constitute reasonable, third-party contract terms.

As the People noted in their Objections/Comments, the possibility arises that terms that are too stringent could have the undesired effect of both discouraging bidder participation in the utilities' RFPs and, ironically, increase costs to ratepayers as vendors attempt to recover the increased administrative costs associated with the new terms. OAG Objection/Comments at 4-5. The IPA's Plan, too, recognizes the potential impact on ratepayer costs and savings achieved in acknowledging the gray area that exists in IPA energy efficiency bids between a bid that passes the cost-effectiveness test of Section 16-111.5B but likewise allows for "bidders to propose programs with excessive administration costs by finding headroom in the TRC analysis." IPA Plan at 111.

Given the ALJ's October 5, 2016 decision not to hold hearings on this and other issues raised in the parties' Objections/Comments, the People suggest that the Commission require the IPA, the utilities and stakeholders to specifically explore this issue through the SAG IPA Workshop process. The discussion should include input from the utilities, stakeholder experts, and other fact-based resources.

**2. *Ensuing that Section 16-111.5B Contracts Receive the Same Level of Scrutiny as Section 8-103 Contracts.***

In its Objections/Comments, Ameren acknowledges an issue likewise raised in the OAG Objections/Comments: how to ensure that IPA bidder contracts receive the same level of

scrutiny as Section 8-103 contracts in order to refine and improve the scope, scale and price of bids. Ameren Objection at 8. As the OAG pointed out, the Commission specifically required the Utilities in their last Procurement Order in Docket No. 15-0541 to develop a plan to ensure that Section 16-111.5B contracts receive the same level of scrutiny as Section 8-103 contracts in terms of minimizing cost to the ratepayer and maximizing energy savings achieved. The Commission's Final Order in ICC Docket No. 15-0541 Final Order stated:

It seems to be a simple matter to require the same level of scrutiny for Section 16-111.5B contracts as that which is imposed for Section 8-103 contracts. The utilities are directed to develop a plan to implement use of the same scrutiny for Section 16-111.5B contracts as that for Section 8-103 contracts through workshops conducted by the SAG.

ICC Docket No. 15-0541, Order of December 16, 2015 at 110. The IPA's Plan recognizes the potential impact on ratepayer costs and savings achieved in acknowledging the gray area that exists in IPA energy efficiency bids between a bid that passes the cost-effectiveness test of Section 16-111.5B but likewise allows for "bidders to propose programs with excessive administration costs by finding headroom in the TRC analysis." IPA Plan at 111.

Ameren suggests that this topic could, again, be discussed further in workshops, and that no specific finding be issued by the Commission on this point in this docket. Ameren Objections at 8. This, however, was precisely the procedure approved in last year's docket, with no resolution achieved, despite the Commission's clear finding that the utilities should develop a plan to ensure that the IPA contract process mirrors the Section 8-103 process in terms of vigor and scrutiny. The Utilities have presented no evidence in this docket why that directive cannot be achieved. Again, the People urge the Commission to require the Utilities to include in their RFPs, notice to vendors that the Utilities shall, as a condition of the contracting process and after

Commission approval of a program that passes the TRC and performance risk criteria: (1) scrutinize the cost per kilowatt hour saved to ensure that the price, while passing the TRC, is not inflated and if necessary, negotiate a reduced cost consistent with the Utility's Section 8-103 contracting practices; and (2) scrutinize the implementation strategy and program design, including the energy efficiency measure mix, to ensure that the program is consistent with best practices.

As noted in the AG Objections/Comments, all modifications to the programs and forecasted costs should be reported to the Commission prior to the start date of the 2017 Procurement Plan. The bottom line is that the Commission should ensure that these programs are as cost-effective as the programs approved under Section 8-103 of the Act. Ratepayers pay for both these programs through the single energy efficiency rider. There should be no difference in Commission, utility or ratepayer expectations that the programs that are being financed by utility customers are worth the dollars spent.

**D. Section 9.5.4 --- Gas Savings Issue**

In its Objections/Comments, Ameren raises an issue likewise discussed by the IPA in its Plan – whether and to what extent programs that produce gas savings should be included in the IPA Plan. Ameren Objections at 9. Ameren notes while it has always accounted for gas savings in its calculation of the total resource cost test (“TRC”), as required by Section 16-111.5B(b), it maintains that “programs which produce primarily gas savings should not be a part of the Section 5/16-111.5B electricity procurement plan approved by the Commission.” *Id.*

Ameren further note that the Commission's obligation to include in the IPA portfolio of energy efficiency programs all cost-effective programs, it is modified by the phrase “to the extent practicable.” *Id.* at 10, citing 220 ILCS 5/16-111.5B(a)(5). Ameren also notes that the

Commission has concluded that the quoted language “gives [the] Commission the authority to set practical limits on the procurement of EE” that allows it to exercise “judgment and flexibility.” *Id.*, citing ICC Docket No. 15-0541, Order of December 16, 2015 at 100-101. Ameren concludes that if the gas benefits are “stripped out” pursuant to the Cost of Supply (“COS”) analysis, referenced in Section 16-111.5B(a)(3)(E), then that program should not be included in the portfolio. Ameren Objections at 11. Ameren notes, importantly, in a footnote on page 11 of its pleading, that the COS analysis should *not* incorporate avoided transmission and distribution costs – a position with which the OAG disagrees.

Section 16-111.5B requires Ameren to solicit third parties for energy efficiency resources and to forward those bids that pass the total resource cost test to the IPA for approval. The TRC test is clearly defined at 20 ILCS 3855/1-10. Based solely on this criterion, all of the hypothetical program designs posited by AIC should be forwarded to the IPA because they all pass the TRC, which Ameren did do. However, 220 ILCS 5/16-111.5B(a)(3)(D) and (E) also require the utility to submit to the IPA “an analysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service” (Section 16-111.5B(a)(3)(D)) and an “analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply” (Section 16-111.5B(a)(3)(E)). That use of the word “compare” stands in contrast with the analysis called for in Section 16-111.5B, which provides that the utilities provide an “[a]nalysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service.” 220 ILCS 5/16-111.5B(a)(3)(D). The cost of electric service must reasonably be viewed to include all costs associated with getting electricity to the customer’s meter. This is effectively



what is defined by the Utility Cost Test (UCT). The UCT is similar to the TRC test except that it only counts the societal benefits associated with the electric utility system, and ignores all other benefits.

The calculation methodology and application of the Cost of Supply was a subject of significant debate in the consideration of the 2016 Plan, with the IPA believing that Ameren Illinois' approach to calculating the Cost of Supply—an approach which disregarded gas savings and transmission & distribution savings, which differed from Ameren Illinois' established practice from prior years, and which differed from (and continues to differ from) the ongoing practice of ComEd—was inappropriately restrictive, especially when used to advocate for the non-adoption of otherwise cost-effective energy efficiency programs. IPA Plan at 127.

The OAG concurs with these remarks. A COS analysis that fails to incorporate recognition of avoided transmission and distribution costs, as well as avoided line losses from efficiency resources, is inconsistent with what we know to be true: that the cost of avoided supply also includes the transmission and distribution (“T&D”) costs that are necessary to deliver the supply. The calculation methodology and application of the COS was noted by the IPA in its Plan at page 115-116. The IPA noted that Ameren's approach to calculating the Cost of Supply differed from its established practice from prior years, and differs from ComEd's current practice. In Docket No. 15-0541, the IPA characterized it as “inappropriately restrictive, especially when used to advocate for the non-adoption of otherwise cost-effective energy efficiency programs.” IPA Plan at 115. The IPA further noted that it “continues to have reservations about the methodology used by Ameren Illinois to calculate the Cost of Supply... .” *Id.* at 116.

To be clear, the OAG is not advocating for the cross-subsidization of electric energy efficiency programs by gas customers, as the company's comments at 11-12 suggest would occur. The bottom line is that if a program passes the TRC and the UCT, including a recognition of T&D avoided costs and avoided line losses, the program is eligible for inclusion in the portfolio. This is because the UCT only recognizes benefits that accrue directly to the electric system, and thus electric ratepayers. So long as the UCT benefit-cost ratio exceeds 1.0, all electric ratepayers are better off, regardless of the presence of additional gas benefits. Further, even if a hypothetical program did not pass the UCT but did pass the TRC, Ameren can and should explore options that can result in a positive UCT prior to any program rejection. For example, AIC could ask the bidder if they were willing to more heavily – or even solely – target customers with electric-only end uses. Similarly, without suggesting that any sort of adjustment to its 8-103 portfolio should occur in the instant case, AIC, as the gas utility in the territory running Section 8-104 programs, could consider in the future contributing gas efficiency funds to the overall cost-effective program to ensure that all electric ratepayers would benefit and that the portion of the program funded through Section 16-111.5B would pass the UCT. These analyses are in keeping with the mandate in Section 16-111.5B “fully capture(s) the potential for all achievable cost-effective savings, to the extent practicable”. 220 ILCS 5/16-111.5B(a)(5).

**E. Section 9.5.4.3 – Behavioral Program (OPower)**

In its Objections/Comments, Ameren urges the Commission to reject the Behavioral Program bid that the IPA believes should be included, noting that it includes “significant gas savings for gas customers.” Ameren Objection at 16-18. What Ameren means by “significant” is not defined.

Ameren also notes that “there is limited research available regarding the persistence of the savings achieved” related to the evaluation of dual fuel programs. *Id.* at 18. The Company states that it is unclear to what extent the behavioral changes that were prompted by the reports and information persist when a program ends and the customers stop receiving the reports. Importantly, Ameren notes that the bid in question “requires the acceptance of the baseline continuation program in order to implement any expansion program.” *Id.* The term “baseline program,” refers to the continuation of the program to customers who currently receive the behavioral reports.

Staff, too, expresses some concern about the program in its Objections/Comments, noting in particular that “the Continuation Program...would not significantly affect energy savings, due to the high level of ‘persistence’ associated with this behavior program.” Staff Objections at 17. Staff notes that excluding the program would not significantly affect energy savings “due to the high level of ‘persistence’ associated with this behavioral program.” *Id.* Staff states that customers who have been in the program for many years may save 95% or more of what they can be expected to save under the Continuation Program, even if is excluded from the Procurement Plan. *Id.*

In consideration of these points, the People support the rejection of this bid for this procurement year. While the OAG supports the recognition of gas and all other benefits in the evaluation of the cost-effectiveness of an IPA program bid, as noted in the previous section of this pleading, the OAG sees value in examining the veracity of the most recent TRM-reported savings persistence of the Behavioral Program at issue here – particularly given the reported program design in this particular bid, which includes sending the behavioral reports to the same customers that have received them in the past. The OAG recommends that this particular bid at

issue in Section 9.5.4.3 of the IPA's Plan be excluded from the IPA Plan so that independent evaluators can assess the persistence of the program over a single year when the program is not being provided. Of course, in doing so, the Commission should include a directive to Ameren that requires it commit to conduct such an evaluation on a timely basis and follow procedures regarding the development and review of EM&V work plans that are consistent with the Illinois Energy Efficiency Policy Manual.

**F. Section 9.5.5 – Duplicative Programs**

Section 16-111.5B(a)(2) provides that the IPA's Plan "shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures." 220 ILCS 5/16-111.5B(a)(2). A conundrum exists every three years, when the IPA energy efficiency procurement plan is approved prior to the next Section 8-103 three-year energy efficiency portfolio standard plan, making the identification of "expansions" of existing Section 8-103 programs that have not yet been approved challenging. *See* 220 ILCS 5/16-111.5B(a), *gen'ly*; 220 ILCS 5/8-103(a)-(f),

Complicating the issue is the fact that the Commission appropriately and to its credit, issued directives in the last three-year plan dockets to both ComEd and Ameren to place certain programs that were clearly cost-effective with significant expansion potential, into the IPA portfolio. *See* ICC Docket No. 13-0495, Order of January 28, 2014 at 88; ICC Docket No. 13-0498, Order of January 28, 2014 at 62. For example, the Commission ordered that residential behavior and lighting programs be shifted to the IPA portfolio. *Id.* Both ComEd and Ameren also moved their small business direct install ("SBDI") programs into their respective IPA portfolios during the current three-year plan.

The difficulties that arise in soliciting the expansion of programs that are not yet approved in a Section 8-103 plan was an issue specifically raised in the last IPA Procurement Plan docket. Ultimately, the Commission directed the IPA, utilities and stakeholders to engage in IPA workshops to attempt to reconcile the how solicitation of IPA bids should work when the Section 8-103 programs for the next three-year EE Plan have not yet been approved.<sup>2</sup>

As the IPA Workshop Report details, a solution was crafted. As the IPA Workshop Report notes, “ComEd placed the Residential Lighting, Home Energy Reports and Small Business Direct Install programs into the Section 16-111.5B IPA Procurement Plan process, effectively setting their Section 8-103 Energy Efficiency Portfolio Standard (“EEPS”) program sizes to zero and using the IPA to capture all cost-effective opportunities to “expand” these programs. ComEd’s rationale is that these ‘expanded’ programs would be otherwise unduly constrained under EEPS.”<sup>3</sup> Ameren, on the other hand, used an open-ended RFP that included no specific direction regarding program content, and informed bidders that no Section 8-103 programs were yet in place. Ameren further argues that the following procedure be approved as a consensus policy:

For third-party programs that would duplicate programs Ameren Illinois plans to propose for inclusion in its Section 8-103/8-104 Plan, Ameren Illinois may request that the potentially duplicative third-party program only be conditionally approved or approved with conditions pursuant to Section 16-111.5B in the event that the Commission does not approve a duplicative Section

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<sup>2</sup> See ICC Docket No. 15-0541 Final Order at 93-94: “The Commission recognizes the challenges of ‘expansion’ of Section 8-103 programs when the portfolio for such programs has not yet been approved. This creates a natural tension: while unapproved programs cannot easily be “expanded,” the law calls for IPA plans to fully capture the potential for all achievable cost-effective savings, which presumably includes expanded Section 8-103 programs. In recognition of this challenge, the Commission directs the SAG to address this topic at workshops. These workshops should demonstrate a genuine commitment to resolving this problem, consistent with the goal of capturing all achievable energy savings. It should also consider solutions such as the conditional approval of Section 8-103 program expansions in the IPA’s 2017 Plan and potential contractual mechanisms to accommodate the uncertainty that is present when there is an unapproved Section 8-103 portfolio.”

<sup>3</sup> *Report from the Illinois Energy Efficiency Stakeholder Advisory Group (IL EE SAG) 2016 Section 16-111.5B Workshop Subcommittee*, p. 7.

8-103 / 8-104 program in Ameren Illinois' Section 8-103 / 8-104  
Plan proceeding.”<sup>4</sup>

In its Objection/Comments, Ameren requests that the Commission order the language cited above be included in the IPA Plan (or make clear that the language in the IPA Plan Appendix H, which documents consensus items from the workshops, is approved in the Commission's Order). Ameren Objections at 5.

As the People noted in their Objections/Comments, the IPA similarly suggested that a cost-effective SBDI program proposed by a bidder responding to Ameren's RFP be approved conditionally, subject to Commission approval of an SBDI program in Ameren's Section 8-103 plan in Docket No. 16-0413. IPA Plan at 120. But this additional language, cited as a consensus position in the IPA Workshop report, requires further clarification in light of the wording of the Ameren RFP, the bid results, and Ameren's proposed portfolio of programs that the company filed in its Section 8-103 approval proceeding, ICC Docket No. 16-0413. In this case, a vendor proposed a three-year SBDI program of a certain size for the IPA portfolio. Ameren then included an SBDI program in its Section 8-103 filing, at a considerably smaller projected savings level and budget amount. If the Commission simply adopts the proposed Ameren language as a consensus policy, and the IPA's suggestion that the SBDI program be approved conditionally, subject to rejection of a similar Ameren program in Docket No. 16-0413, it is clear that this opportunity for a cost-effective SBDI program will be dashed because the program could be identified as duplicative, retroactively.<sup>5</sup> Stated another way, unless clarified, approval of this

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<sup>4</sup> *Report from the Illinois Energy Efficiency Stakeholder Advisory Group (IL EE SAG) 2016 Section 16-111.5B Workshop Subcommittee*, p. 7.

<sup>5</sup> While Ameren and Stakeholders OAG, ELPC, NRDC and the Citizens Utility Board reached a Stipulation in Docket No. 16-0413 that would treat the IPA SBDI program at issue as an expansion of the Ameren 8-103 SBDI program, the fact remains that the language highlighted would permit the potential inequity – a cost-effective bid deemed duplicative retroactively due to a utility's decision to offer the same program in its Section 8-103 portfolio – to arise again in the future. Hence, clarification by the Commission on this point is crucial.

language would permit a utility to issue an open-ended bid that informs potential bidders that no programs yet exist in the utility's Section 8-103 portfolio, but then later declare that a cost-effective bid be declared "duplicative" because the utility chose to propose the same program (and on a smaller scale) in its Section 8-103 filing.

Notwithstanding this "consensus" language, neither Ameren or any other utility should be permitted to craft a so-called open-ended bid, with no indication in the bid of what the utility "plans to propose", and then be permitted to declare an IPA bid duplicative, retroactively. In other words, the utility should be directed to clearly indicate *in the RFP* what it "plans to propose for inclusion in its 8-103/8-104 Plan" in order to prevent any manipulation of the concept of "duplicative" programs.<sup>6</sup>

The bottom line is that, notwithstanding the situation that arises every three years when the IPA bidding process precedes the 8-103 Plan approval process, the General Assembly envisioned a framework that would create a coherent portfolio of programs that maximize cost-effective savings. The idea was *not* to turn the IPA energy efficiency program procurement process into a game of chess, whereby vendors are forced to predict a utility's next move and potential programs to be included in the 8-103 filing in order to have a shot at providing cost-effective programs. Instead, a procedure that ensures that the approved IPA portfolio of programs "fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act" must be ensured. 220 ILCS 5/16-111.5B(a)(5). That means that when a utility – in this case, Ameren – employs an open-ended RFP process, inviting all potential bidders to bring proposals for any

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<sup>6</sup> The issue has been addressed for purposes of *this* procurement plan in a separate Stipulation, to be filed in ICC Docket No. 16-0413. The SBDI program at issue will be viewed as an expansion of the proposed Ameren SBDI program. Nevertheless, the People are concerned that unless clarified, the language could trigger the exclusion of cost-effective programs the next time the IPA process precedes approval of Ameren's Section 8-103 Plan.

type of program, that utility must be precluded from later proclaiming that a program bid is duplicative if it hasn't been specifically identified in the RFP as one that will be included in the utility's 8-103 portfolio.

The OAG urges the Commission to include a finding in its Order in this docket that makes that point clear to the utilities.

### **III. CONCLUSION**

In accordance with the recommendations above, the People of the State of Illinois respectfully request that the IPA incorporate the comments and conclusions provided above in its final Procurement Plan.

Respectfully submitted,

People of the State of Illinois  
By Lisa Madigan, Attorney General

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